

SENATE BILL 1572

By McNally

AN ACT to amend Tennessee Code Annotated, Title 39;
Title 40 and Title 55, relative to sentencing in
criminal cases.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(4) and substituting instead the following:

(4) Any person violating § 55-10-401, upon conviction for a fourth or fifth offense, shall be sentenced as a felon to serve not less than one hundred fifty (150) consecutive days nor more than the maximum punishment authorized for the appropriate range of a Class E felony.

(5)

(A) A sixth or subsequent conviction for violating § 55-10-401, or any other applicable prior conviction as defined in § 55-10-405(c), is a Class C felony and any person sentenced under this subdivision (a)(5) shall be sentenced to serve no less than the minimum sentence of imprisonment established in subdivision (a)(4) for a fourth offender, and not more than the maximum punishment authorized for the appropriate range of a Class C felony. For this subdivision (a)(5) to be applicable, the person shall have been convicted at least five (5) times for violations of § 55-10-401, or any other applicable prior conviction as defined in § 55-10-405(c), prior to committing, on or after July 1, 2016, a sixth or subsequent offense.

(B) In addition to the required term of imprisonment for a sixth or subsequent offense, all of the collateral consequences of a violation of § 55-10-

-401, including a fine, forfeiture, driver license suspension or revocation, interlock and other monitoring devices, substance abuse assessments, in-patient or out-patient treatment, drug court or DUI court, and conditions of probation shall also apply to a sixth or subsequent offender.

(6) For purposes of this subsection (a), "prior conviction" includes convictions under the laws of any other state that, if committed in this state, would constitute the offense of driving under the influence of an intoxicant under § 55-10-401. If an offense in a jurisdiction other than this state is not identified as driving under the influence of an intoxicant in this state, it shall be considered a prior conviction if the elements of the felony are the same as the elements for driving under the influence of an intoxicant under § 55-10-401.

SECTION 2. Tennessee Code Annotated, Section 55-10-405, is amended by deleting subsection (c) and substituting instead the following:

(c)

(1) A prior conviction for an offense other than § 55-10-401 shall be treated the same as a prior conviction for a violation of § 55-10-401 if:

(A) The person committed and was convicted of the prior offense before the commission of the violation of § 55-10-401; and

(B) An essential element of the prior offense is that the driver's ability to safely operate or be in physical control of a motor vehicle is impaired by reason of:

(i) Being under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof;

(ii) The alcohol concentration in the driver's blood or breath being eight-hundredths of one percent (0.08%) or more; or

(iii) The alcohol concentration in the driver's blood or breath being four-hundredths of one percent (0.04%) or more and the vehicle is a commercial motor vehicle as defined in § 55-50-102.

(2) Subdivision (c)(1) shall apply to any conviction occurring in another state or any conviction for an offense created after the effective date of this act, provided the offense or offenses meet the criteria of subdivision (c)(1).

(3) Offenses that meet the criteria of subdivision (c)(1) include §§ 39-13-106, 39-13-115, 39-13-213(a)(2), 39-13-218, and 55-10-421.

(4) The prior conviction is not precluded for enhancement purposes by the time limitations established in subsection (a).

(5) For the purpose of determining a "prior conviction", any applicable conviction occurring prior to the effective date of this act shall be considered a prior conviction if the instant violation of § 55-10-401 occurs on or after July 1, 2016.

SECTION 3. Tennessee Code Annotated, Section 40-11-118, is amended by deleting subdivision (d)(1) and substituting instead the following:

(1) When the court is determining the amount and conditions of bail to be imposed upon a defendant, the court shall consider the use of special conditions for the defendant, including, but not limited to, the conditions set out in subdivision (d)(2), if the defendant is charged with a violation of any offense that meets the criteria of § 55-10-405(c), and the defendant has one (1) or more prior convictions for a violation of any offense meeting the criteria of § 55-10-405(c).

SECTION 4. Tennessee Code Annotated, Section 40-11-148, is amended by deleting subdivision (b)(1) and substituting instead the following:

(1) When the court is determining the amount and conditions of bail to be imposed upon a defendant who is charged with an offense meeting the criteria of § 55-10-405(c), the court shall consider the use of special conditions for such defendant, including, but not limited to, the conditions set out in subdivision (b)(2), if the offense for which bail is being set was committed while the defendant was released on bail for a prior charge of violating any offense meeting the criteria of § 55-10-405(c).

SECTION 5. Tennessee Code Annotated, Section 55-10-406, is amended by deleting the final sentence of subsection (a) and substituting instead the following:

However, no such test or tests may be administered pursuant to this section unless conducted at the direction of a law enforcement officer having probable cause to believe the person was driving while under the influence of any intoxicant, controlled substance, controlled substance analogue, drug, substance affecting the central nervous system, or combination thereof as prohibited by § 55-10-401, or committing any other offense meeting the criteria of § 55-10-405(c).

SECTION 6. Tennessee Code Annotated, Section 55-10-407, is amended by deleting subdivision (f)(3) and substituting instead the following:

(3) For the purpose of determining the license suspension period under subsection (a), a prior conviction for a violation of any offense meeting the criteria of § 55-10-405(c), shall be treated the same as a prior conviction for a violation of § 55-10-401.

SECTION 7. Tennessee Code Annotated, Section 55-10-409, is amended by deleting subdivision (a)(1) and substituting instead the following:

(1) Has a prior conviction for a violation of any offense meeting the criteria of § 55-10-405(c); or

SECTION 8. Tennessee Code Annotated, Section 55-10-411, is amended by deleting the first sentence of subdivision (b)(2) and substituting instead the following:

In the prosecution of second or subsequent offenders, the indictment or charging instrument must allege the prior conviction or convictions for violating any offense meeting the criteria of § 55-10-405(c), setting forth the time and place of each prior conviction or convictions.

SECTION 9. Tennessee Code Annotated, Section 55-10-413, is amended by deleting subdivision (f)(1) and substituting instead the following:

(1) In addition to all other fines, fees, costs, and punishments now prescribed by law, including the fee imposed pursuant to subsection (d), a blood alcohol or drug concentration test (BADT) fee in the amount of two hundred fifty dollars (\$250) shall be assessed upon a conviction for a violation of any offense meeting the criteria of § 55-10-405(c), for each offender who has taken a breath alcohol test on an evidential breath testing unit provided, maintained, and administered by a law enforcement agency for the purpose of determining the breath alcohol content or has submitted to a chemical test to determine the alcohol or drug content of the blood or urine.

SECTION 10. Tennessee Code Annotated, Section 55-50-502, is amended by deleting from subdivision (c)(3)(B)(i) the language "§ 39-13-106," and substituting instead the language "§ 39-13-106, § 39-13-115,".

SECTION 11. Tennessee Code Annotated, Section 39-17-418, is amended by deleting subdivision (c)(1) and substituting instead the following:

(1) Except as provided in subsection (d), a violation of this section is a Class A misdemeanor.

SECTION 12. Tennessee Code Annotated, Section 39-17-418, is amended by deleting subsection (e) in its entirety.

SECTION 13. Tennessee Code Annotated, Section 39-17-428, is amended by deleting subdivisions (b)(3) and (b)(6) and substituting instead the following:

(3) Third or subsequent conviction for a misdemeanor drug offense involving a Schedule VI controlled substance classified as marijuana or hashish 1,000

(6) Third or subsequent conviction for a misdemeanor drug offense involving a scheduled controlled substance other than Schedule VI 1,000

SECTION 14. Tennessee Code Annotated, Section 55-10-402, is amended by deleting subdivision (a)(1)(A) and (a)(1)(B) and substituting instead the following:

(A) Any person violating § 55-10-401, shall, upon conviction for the first offense, be sentenced to serve in the county jail or workhouse not less than forty-eight (48) consecutive hours nor more than eleven (11) months and twenty-nine (29) days.

(B) Any person violating § 55-10-401, upon conviction for the first offense with a blood alcohol concentration of twenty-hundredths of one percent (0.20%) or more, shall serve a minimum of seven (7) consecutive days rather than forty-eight (48) hours.

SECTION 15. Tennessee Code Annotated, Section 55-10-420, is amended by deleting the section in its entirety.

SECTION 16. This act shall take effect July 1, 2016, the public welfare requiring it.